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NEW JERSEY BOARD OF  
CHIROPRACTIC EXAMINERS

STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC  
SAFETY  
DIVISION OF CONSUMER AFFAIRS  
BOARD OF CHIROPRACTIC  
EXAMINERS  
DOCKET NO.

In the Matter of the Suspension)  
or Revocation of the License of )

STEPHEN M. JOHNSON, D.C. )  
LICENSE NO. 1687 )

To Practice Chiropractic in )  
the State of New Jersey )  
\_\_\_\_\_ )

Administrative Action

FINAL DECISION AND ORDER

This matter was brought before the New Jersey State Board of Medical Examiners on April 16, 1990 on the complaint of Robert J. Del Tufo, Attorney General of New Jersey, by Joan D. Gelber, Deputy Attorney General. The matter was transferred to the State Board of Chiropractic Examiners as an unfinished undertaking of the State Board of Medical Examiners concerning the practice of chiropractic pursuant to N.J.S.A. 45:9-41.24. The complaint charged respondent in Counts I and II with conduct constituting gross malpractice, professional misconduct, misrepresentation and deception, failure of good moral character, and an incapacity to discharge the responsibilities of a licensee in a manner consistent with the public's health, safety and welfare, in violation of N.J.S.A. 45:1-21 and N.J.S.A. 45:9-14.5 or N.J.S.A. 45:9-41.18. Said counts alleged inappropriate staring and touching of the genitals of two adolescent male patients. Counts III and IV of the complaint further alleged repeated acts of negligence and failure to comply with an Order of the Board in

violation of N.J.S.A. 45:1-21 in connection with radiographs and the preparation of records for the two patients. An answer was filed on behalf of the respondent on May 3, 1990, by Joseph M. Gorrell, Esq. (Brach, Eichler, Rosenberg, Silver, Bernstein, Hammer and Gladstone, attorneys).

The Attorney General preliminarily moved before the Board of Medical Examiners for a temporary suspension of licensure pursuant to N.J.S.A. 45:1-22. A hearing was held on April 11, 1990, and the application was denied. A motion by respondent to seal the record and complaint also was denied. The matter was transferred to the Board of Chiropractic Examiners and subsequently was referred to the Office of Administrative Law for a determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. Hearings were held before M. Kathleen Duncan, Administrative Law Judge, on April 12, 24, 25, 26, 29, 30, May 14, and May 23, 1991. Prior to the commencement of the hearing on April 12, 1991, an Order was entered by Judge Duncan closing the hearings to the public and sealing the record pending final disposition by the State Board of Chiropractic Examiners. A motion to amend the complaint to conform with the evidence was made by the Attorney General during the course of the proceedings, and the amended complaint was received and filed on April 30, 1991.

Judge Duncan's Initial Decision was issued on February 7, 1992, and is incorporated by reference as if fully set forth, except as specifically modified herein. Exceptions to that Initial Decision were filed by the respondent and the Attorney

General.

On March 19, 1992, counsel for the Attorney General and the respondent appeared before the Board of Chiropractic Examiners for oral argument on the Exceptions to the Initial Decision. In addition, the respondent was permitted to personally address the Board in mitigation of penalty. The Board moved into closed session in order to deliberate on the matter and thereafter announced its final decision and order in public session on March 19, 1992. Counsel for the respondent then moved before the Board to seal the entire record of this matter.

After due consideration of the Administrative Law Judge's decision, transcripts, exhibits, documentary evidence, attorneys' briefs, exceptions, and mitigating circumstances for a determination of penalty, the Board of Chiropractic Examiners makes the following findings of fact and conclusions of law.

#### FINDINGS OF FACT

The Board adopts all of the findings of fact set forth in Judge Duncan's Initial Decision including her findings with respect to credibility of the witnesses as if they were fully set forth herein.

#### CONCLUSIONS OF LAW

Although the Board reviewed and adopted all of the findings of fact made by the Administrative Law Judge, we differ with Judge Duncan with respect to some of the conclusions to be drawn from those findings. Judge Duncan was persuaded that the respondent was not guilty of sexual exploitation of his patients, but that the testimony of qualified expert witnesses established

that he was grossly insensitive to the modesty and privacy requirements of his adolescent patients and that such insensitivity represented a deviation from accepted standards of chiropractic practice. Judge Duncan further concluded that respondent's insensitivity to these patients' rights constituted professional misconduct and/or gross malpractice. In her view the evidence did not support an affirmative finding with respect to the other charges in Counts I and II.

Two experts who testified on behalf of the Attorney General and three experts who testified on behalf of the respondent addressed the issue of whether insensitivity to the modesty and privacy requirements of adolescent patients deviated from accepted standards of chiropractic practice. Both of the State's experts opined that such conduct was a gross deviation. The Board has evaluated the expert opinion expressed by all of those who testified in respect to substantially similar underlying facts, and the Board has determined to accord different relative weight to the expert opinions than that accorded by the A.L.J. In addition, the Board evaluated the undisputed evidence in light of the unique expertise which it alone possesses.

Accordingly, the Board concludes that respondent's insensitivity to the modesty and privacy requirements of two adolescent patients constituted repeated acts of simple negligence but did not rise to the level of gross malpractice or professional misconduct. The act of moving a penis in order to avoid pain or injury during the performance of a pubic adjustment, in the judgment of the Board, is not inappropriate

and is within accepted standards of chiropractic practice. However, there is sufficient competent and credible evidence in this matter to conclude that the respondent was negligent in his failure to acknowledge and recognize the discomfort that adolescent boys may experience during the course of such chiropractic treatment and in his failure to affirmatively act to allay their concerns or embarrassment.

The Board adopts virtually all of Judge Duncan's conclusions of law with respect to those aspects of Counts III and IV in which the State prevailed. With respect to the charges that respondent failed to identify proper indications for X-ray examination for each patient and failed to prepare proper records for each patient, the Board more specifically concludes that respondent engaged in repeated acts of negligence in that there was no X-ray report for each patient, there was no recorded treatment plan for each patient, and there was a failure to adequately report the progress of these patients.

#### DISPOSITION AND ORDER

Based on our review of the Initial Decision, and in consideration of the arguments of counsel and our assessment of the record itself, the Board has determined to modify the disposition and Order made by the Administrative Law Judge in her Initial Decision. Although the Board concurs that the violations warrant the imposition of a meaningful penalty, both as a deterrent and for the protection of the public, the Board has concluded that in view of the Board's determination that the conduct concerning respondent's insensitivity to the privacy and

modesty of two adolescent boys did not rise to the level of gross malpractice or professional misconduct but rather constituted repeated acts of simple negligence, a sanction less than that recommended in the Initial Decision is warranted.

The Board considered each of the contentions made by the Attorney General and counsel for respondent in their Exceptions to the Administrative Law Judge's decision. As noted previously, the Board specifically accepts Judge Duncan's findings with regard to the credibility of witnesses especially in regard to the lay witnesses. In regard to the underlying facts, the Board believes that due weight must be accorded to the findings of the trial judge who had a superior opportunity to observe the demeanor of the witnesses and judge of their credibility. This is particularly of moment when significant evidence is largely testimonial rather than documentary. Therefore, the Board is not persuaded by the Exceptions of either party that Judge Duncan's findings in regard to the facts of this case or the credibility of witnesses are not reliable. Quite to the contrary, the Board is impressed with the A.L.J.'s thorough and objective presentation of the testimony of each witness in this very difficult case.

The Board also has reviewed and considered the motion of the respondent to seal the entire record in this matter on the basis of the letter briefs submitted by the Attorney General and counsel for the respondent. Although the Board acknowledges and recognizes the strong public policy favoring complete disclosure of licensure matters conducted by the Board, this right of the

public to be informed must be balanced against the need to protect parties or witnesses from undue embarrassment or deprivation of privacy as permitted by N.J.A.C. 1:1-14.1(b).

In view of the highly personal nature of much of the testimony and documentary evidence which was produced during the course of these proceedings and the fact that the State failed to prevail on the allegations that the respondent touched the genitals of two adolescent male patients for an improper non-chiropractic purpose, the Board has determined that the embarrassment and invasion of very private matters outweighs the public's need to be privy to such details. However, the Board is not persuaded that total secrecy is warranted and has entered as part of the Order herein a partial sealing of the record.

ORDER

IT IS ON THIS 29<sup>th</sup> DAY OF *April*, 1992,

ORDERED THAT:

The sanctions imposed by the Administrative Law Judge shall be adopted in part and modified in part and are fully set forth herein:

1. The respondent shall be assessed a civil penalty in the amount of \$2,500.00 for repeated acts of negligence in violation of N.J.S.A. 45:1-21(d) for the finding in connection with Counts I and II of the Complaint that respondent was insensitive to the modesty and privacy requirements of two adolescent boy patients. The civil penalty shall be made payable to the State of New Jersey and submitted to the Board of Chiropractic Examiners at 124 Halsey Street, Sixth Floor, Newark, New Jersey 07102, no

later than 30 days from the entry date of this Order.

2. The respondent is hereby reprimanded by the Board for his failure to maintain adequate records on a repeated basis in violation of N.J.S.A. 45:1-21(d) in connection with the allegations of Counts III and IV of the Complaint.

3. The respondent shall ~~cease~~ and desist from henceforth maintaining inadequate and incomplete chiropractic records and is hereby directed to take affirmative, corrective action to improve the quality of his patient records including express compliance with the requirements for patient records set forth in N.J.A.C. 13:44E-2.2.

4. The respondent shall pay the costs of these proceedings to the State in the amount of \$8,703.32. (Of that sum \$1,536.32 is attributable to costs incurred by the Board of Medical Examiners and \$7,174.00 are costs paid by the Board of Chiropractic Examiners.) The respondent shall submit the total amount of \$8,703.32 made payable to the State of New Jersey to the Board of Chiropractic Examiners at 124 Halsey Street, Sixth Floor, Newark, New Jersey 07102 no later than 60 days from the entry date of this Order.

5. The entire record in this matter shall be sealed from disclosure to the public with the exception of the following documents:

- (1) The Verified Complaint filed with the  
Board of Medical Examiners on April 4,  
1990,
- (2) The Initial Decision of the Administrative

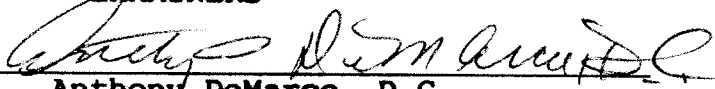
Law Judge dated February 7, 1992,

- (3) The public minutes of the Board's decision in this matter dated March 19, 1992, and the public minutes of the Board of Medical Examiners, and
- (4) The within Final Decision and Order.

The remainder of the record, including, but not limited to, transcripts, documentary evidence and attorney briefs and correspondence, shall be sealed and safeguarded by the Office of Chiropractic Examiners and shall not be disclosed to any party except upon further order of the Board or other court of competent jurisdiction.

NEW JERSEY STATE BOARD OF CHIROPRACTIC  
EXAMINERS

By:

  
Anthony DeMarco, D.C.  
President